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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 United States of America,
12 Plaintiff,

13 v.

14 Richmond American Homes of Arizona,
15 Inc.

16 Defendant.

COMPLAINT

17
18 The United States of America, acting at the request of the Administrator of the United
19 States Environmental Protection Agency ("EPA"), alleges as follows:

20 **INTRODUCTION**

21 1. This is a civil action brought pursuant to Section 113(b)(1) of the Clean Air Act (the
22 "Act"), 42 U.S.C. § 7413 (b)(1), for injunctive relief and the assessment of civil penalties against
23 Richmond American Homes of Arizona, Inc. (Richmond American) for violations of the Act and
24 the federally approved Arizona State Implementation Plan.

25 2. Authority to bring this action is vested in the United States Department of Justice
26 pursuant to 28 U.S.C. §§ 516 and 519, and 42 U.S.C. § 7605.

27 3. Notice of the commencement of this action has been given to the State of Arizona
28 as required by § 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1).

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1 11. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), EPA promulgated lists
2 of attainment status designations for each air quality control region ("AQCR") in every state.
3 These lists identify the NAAQS attainment status of each AQCR for each of the criteria
4 pollutants. In order to implement, maintain and enforce the NAAQS for these criteria pollutants,
5 Section 110 requires each state to adopt a State Implementation Plan ("SIP") for each AQCR (or
6 portion thereof) within the state. The state is required to submit the SIP to EPA for approval.
7 42 U.S.C. § 7410.

8 12. Rule 2 of Regulation 1 and Rule 310 of Regulation 3 of the Maricopa County Air
9 Quality Department ("MCAQD") regulations are part of the federally approved and federally-
10 enforceable SIP that the State of Arizona submitted to the EPA pursuant to Section 110 of the
11 Act, 42 U.S.C. § 7410. *See* 47 Fed. Reg. 26,382 (June 18, 1982), 62 Fed. Reg. 41,856 (Aug. 4,
12 1997), and 67 Fed. Reg. 48,718 (July 25, 2002).

13 13. The Projects are located in Maricopa County, Arizona, within the jurisdiction of
14 MCAQD. The portion of Maricopa County where the Projects exist has been designated as a
15 serious non-attainment area for the NAAQS for PM₁₀. *See*, 40 C.F.R. § 81.303.

16 14. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the commencement of
17 an action for civil penalties and injunctive relief for violations of the federally enforceable SIP.
18 Under Sections 113 (b) of the Act, 42 U.S.C. § 7413(b); the Federal Civil Penalties Inflation
19 Adjustment Act of 1990, Pub.L.No. 101-410, 104 Stat. 890 (1990), amended by Pub. L. No. 104-
20 134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); 61 Fed. Reg. 69, 360
21 (Dec. 31, 1996); and 69 Fed. Reg. 7121 (Feb. 13, 2004), codified at Title 40 of the Code of
22 Federal Regulations (CFR) Part 19, Richmond American is liable for a civil penalty of up to
23 \$27,500 per day for each violation of MCAQD Rule 310 occurring on or after January 31, 1997
24 but on or before March 15, 2004, and a civil penalty of up to \$32,500 per day for each violation
25 of MCAQD Rule 310 occurring after March 15, 2004.

FACTUAL ALLEGATIONS

15. A portion of Maricopa County, which includes the Phoenix, Arizona, metropolitan area, is a designated serious non-attainment area for the NAAQS for PM₁₀. A significant contributor of such particulate matter in Maricopa County is construction sites and other areas in which the naturally stabilized desert surface has been disturbed. Maricopa County, which includes the Phoenix metropolitan area, is among the fastest growing metropolitan areas in the nation, and rapid urban growth has resulted in a sustained rate of new construction in the city and a commensurate increase in the amount of particulate matter. The MCAQD has promulgated Regulation 3, Rule 310 (fugitive dust sources) to control such emissions and Regulation 2, Rule 200, § 305, which requires an earthmoving permit for all dust-generating activities including earthmoving.

16. Richmond American engages in residential construction projects (individually the "Project"; collectively the "Projects") throughout Maricopa County, Arizona. At all times relevant to this litigation, Richmond American engaged in such Projects at the following locations in Maricopa County, Arizona: (1) a 72-acre residential development near the intersection of 107th Avenue and Thomas Road in Avondale, Arizona; (2) a 135-acre residential development near the intersection of Cactus Road and Litchfield Road in Surprise, Arizona; (3) a 27-acre residential development near the intersection of 17th Avenue and Southern Avenue in Phoenix, Arizona; (4) a 54-acre residential development near the intersection of 27th Avenue and Broadway Road in Phoenix, Arizona; and (5) an 11-acre residential development near the intersection of Bullard Road and Cactus Road in Surprise, Arizona.

17. At the Projects, Richmond American engaged in activities which involved importation, export, excavation and/or storage of sand, soil, gravel and other bulk materials by means of large trucks or other vehicles. Sand, soil, or gravel all constitute bulk materials under Rule 310.

18. Between October of 2003 and January of 2005, MCAQD issued a total of ten Notices of Violations ("NOV") for violations of Regulation 3, Rule 310 of the MCAQD Air Pollution Control Regulations. During this time, MCAQD inspected the five Projects listed in

1 paragraph 16 above and determined them to be “dust-generating” and “earthmoving” operations
2 as defined in Sections 200 and 210 of MCAQD Rule 310.

3 19. On October 14, 2003, May 5, 2004, and July 23, 2004, MCAQD inspected the
4 Projects at 107th Avenue and Thomas Road, Avondale, Arizona; Cactus Road and Litchfield
5 Road, Surprise, Arizona; and 17th Avenue and Southern Avenue, Phoenix, Arizona, all within
6 Maricopa County, Arizona, and determined them to be “earthmoving” and “dust-generating”
7 operations subject to MCAQD Rule 310. On October 14, 2003 and May 5, 2004, MCAQD
8 issued NOV’s for failure to operate a water application system while conducting earthmoving
9 operations on disturbed surface areas larger than one acre at the Projects in Avondale and
10 Surprise in violation of MCAQD Rule 310.

11 20. On July 23, 2004, MCAQD inspected the Project at 17th Avenue and Southern
12 Avenue, Phoenix, Arizona, and issued NOV’s for failure to operate a water application system
13 while conducting earthmoving on a disturbed surface area of one acre or larger, failure to install
14 a suitable trackout control device and failure to immediately clean up trackout exceeding 50
15 linear feet in violation of MCAQD Rule 310.

16 21. On January 19, 2005, the EPA issued its Finding and Notice of Violation pursuant
17 to § 113(a)(1) of the Act, 42 U.S.C. § 1413 finding the violations described in paragraphs 19 and
18 20 above.

19 22. On October 6, 2004, MCAQD inspected the Project at Cactus Road and Litchfield
20 Road, Surprise, Arizona, and issued an NOV for failure to install a suitable trackout control
21 device at all exits to the Project in violation of MCAQD Rule 310.

22 23. On December 2, 2004, MCAQD conducted an inspection of the Project at 17th
23 Avenue and Broadway Road, Phoenix, Arizona, and documented two violations of MCAQD
24 Rule 310 including the following: a) failure to install a suitable trackout control device; and b)
25 failure to implement approved dust control measures while conducting dust-generating activity.
26 MCAQD issued NOV’s for two violations.

27 24. On January 11, 2005, MCAQD inspected the Project at Cactus Road and Bullard
28 Road, Surprise, Arizona, and documented two violations of MCAQD Rule 310 including a

1 failure to install a suitable trackout control device and failure to immediately clean up trackout
2 exceeding 50 linear feet. Two NOV's were issued for these violations.

3 25. On May 17, 2005, EPA issued its Finding and Notice of Violation pursuant to
4 § 113(a)(1) of the Act, 12 U.S.C. § 7413, finding the violations described in paragraphs 22, 23
5 and 24 above.

6 26. Plaintiff is informed and believes that unless enjoined by this Court pursuant to the
7 provisions of § 113(b) of the Act, 42 U.S.C. § 7413(b), Richmond American will continue to
8 violate the requirements and provisions of MCAQD Rule 310 in the manner alleged herein.

9 **COUNT ONE**
10 **(Failure to Install Suitable Trackout Control Devices)**

11 27. Paragraphs 1 through 26 are incorporated herein by reference as though fully set
12 forth below.

13 28. At least since July of 2004, Richmond American has engaged in transportation of
14 bulk materials to and from the Projects in that the Projects frequently import and export topsoil
15 by means of large trucks or other vehicles in connection with excavation and grading operations.
16 Sand, soil or gravel all constitute "bulk materials" as defined by MCAQD Rule 310. MCAQD
17 inspections in 2003-2005 all indicated that haul trucks frequently create trackout at the entrances
18 to the Projects as well as paved public roadways leading to and from the Projects. Richmond
19 American is thus an owner and operator of a source engaged in spillage, carry-out, and/or
20 trackout activities. The same inspections and the dust control permits issued by MCAQD also
21 established that the Projects contained disturbed surface areas of five acres or larger.

22 29. As a result, § 308.3(a)(1) of MCAQD Rule 310 required Richmond American to
23 install a suitable trackout control device to control and prevent trackout and/or remove
24 particulate matter from the exterior surfaces of motor vehicles traversing the Projects. A gravel
25 pad (at least 30 feet wide, 50 feet long, and 6 inches deep), grizzly, or a paved road (starting
26 from the point of intersection with a paved public roadway and extending for a centerline
27 distance of at least 100 feet and a width of at least 20 feet) would all have satisfied this
28 requirement.

1 30. All inspections performed by MCAQD on July 23, 2004, October 6, 2004,
2 December 2, 2004, and January 11, 2005, showed that Richmond American failed to install
3 suitable trackout control measures at entrances to the Projects in violation of MCAQD Rule 310
4 and the federally approved and federally-enforceable SIP for the State of Arizona. The
5 violations of § 308.3(a)(1) of MCAQD Rule 310 occurred on July 23, 2004, October 6, 2004,
6 December 2, 2004, and January 11, 2005.

7 **COUNT TWO**
8 **(Failure to Immediately Clean Up Trackout)**

9 31. Paragraphs 1 through 30 are incorporated herein by reference as though fully set
10 forth below.

11 32. At least since July, 2004, Richmond American has engaged in “dust-generating” and
12 “earthmoving” operations as defined in §§ 200 and 210 of MCAQD Rule 310. MCAQD
13 inspections in 2004 and 2005 indicated not only that trackout existed, but also that Richmond
14 American failed to immediately clean up trackout. Section 308.3(b)(1) of MCAQD Rule 310
15 requires that owners or operators like Richmond American, who engage in spillage, carryout
16 and/or trackout activities, to immediately clean up such trackout extending 50 linear feet or
17 more.

18 33. During their inspections of the Projects on July 23, 2004, and January 11, 2005, the
19 MCAQD inspectors observed and measured trackout near the entrances to the Projects that
20 extended at least 50 linear feet. They also observed that Richmond American failed to
21 immediately cleanup the trackout. Richmond American violated § 308.3(b)(1) of MCAQD Rule
22 310 and the federally approved and federally enforceable SIP for the State of Arizona.

23 **COUNT THREE**
24 **(Failure to Operate Water Application System)**

25 34. Paragraphs 1 through 33 are incorporated herein by reference as though fully set
26 forth below.

27 35. At least since October, 2003, Richmond American has engaged in “dust-generating”
28 and “earthmoving” operations as defined in §§ 200 and 210 of MCAQD Rule 310. Additionally,

1 Richmond American has engaged in the transportation of bulk materials to and from the Projects,
2 in that the Projects frequently import and export topsoil by means of large trucks or other
3 vehicles in connection with excavation and grading operations. Sand, soil or gravel all constitute
4 “bulk materials” as defined by MCAQD Rule 310.

5 36. On October 14, 2003, May 5, 2004, and July 23, 2004, MCAQD inspectors observed
6 that Richmond American failed to operate a water application system (e.g., a water truck) while
7 conducting earthmoving operations on a disturbed surface area one acre or larger despite the fact
8 that water had been chosen as the primary control measure in its dust control plans for the
9 Projects. Thus, on October 14, 2003, May 5, 2004, and July 23, 2004, Richmond American
10 violated Section 308.7 of MCAQD Rule 310 and the federally approved and federally
11 enforceable SIP for the State of Arizona.

12 **COUNT FOUR**
13 **(Failure to Implement Dust Control Measures)**

14 37. Paragraphs 1 through 36 are incorporated herein by reference as though fully set
15 forth below

16 38. At least since December, 2004, Richmond America has engaged in “dust-
17 generating” and “earthmoving” operations as defined in §§ 200 and 210 of MCAQD Rule 310.
18 Additionally, at least since December, 2004, Richmond American has engaged in the
19 transportation of bulk materials to and from the Projects, in that the Projects frequently import
20 and export topsoil by means of large trucks or other vehicles in connection with excavation and
21 grading operations. Sand, soil or gravel all constitute “bulk materials” as defined by MCAQD
22 Rule 310.

23 39. On December 2, 2004, an MCAQD inspector at the 27th Avenue and Broadway
24 Project observed that Richmond American failed to implement any approved control measure
25 while conducting a dust-generating activity. The inspector specifically observed a grader
26 engaging in an earthmoving operation and generating dust while no approved control measure
27 was being implemented. The Project required the use of a water truck during such a dust-
28 generating activity as a primary control measure; cessation of operations was identified as a

1 contingency control measure in the plan. Richmond American did neither. Thus, on December
2 2, 2004, Richmond American violated Section 306 of MCAQD Rule 310 and the federally
3 approved and federally enforceable SIP for the State of Arizona.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the United States of America respectfully requests that it be awarded
6 the following relief against Richmond American:

7 A. Issuance of an injunctive order requiring that Richmond American comply with the
8 requirements of Regulation 3, Rule 310 of the MCAQD regulations.

9 B. Assessment of a civil penalty of up to Twenty Seven Thousand Five Hundred
10 Dollars (\$27,500.00) per day for each violation of MCAQD Rule 310 occurring on or after
11 January 31, 1997, but on or before March 15, 2004, and a civil penalty of up to Thirty-Two
12 Thousand Five Hundred Dollars (\$32,500.00) per day for each violation of MCAQD Rule 310
13 occurring after March 15, 2004.

14 C. Reimbursement of costs and disbursements incurred in this action pursuant to 42
15 U.S.C. § 7413(b).

16 D. Such other and further relief as this Court may deem appropriate.

17 Respectfully submitted this 20th day of September, 2007.

18 DANIEL G. KNAUSS
19 United States Attorney
District of Arizona

20 s/Sue A. Klein

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22 SUE A. KLEIN
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7 (415) 972-3882

8 **CERTIFICATION**

9 I hereby certify that on September 20, 2007, I electronically transmitted the attached
10 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice
11 of Electronic Filing to the following CM/ECF registrants:

12 Richard Tobin
13 LEWIS & ROCA, LLP
14 40 N. Central Avenue
15 Phoenix, AZ 85004-4429

16 s/N. Stotler

17 U.S. Attorney's Office
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